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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.12.2020

CORAM:

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

C.M.A.No.2978 of 2019

R.Murugan

..Appellant/Petitioner

Vs.

1. M.Padmavathy

2. ICICI Lombard General Insurance Co.Ltd.,
C/o.Motor III Party Claims Office,
Arihant Plaza 1st Floor,
84 & 85 Waltax Road,
Chennai - 600 003.

..Respondents/Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Order and Decree dated 05.03.2015, made in M.C.O.P.No.3916 of 2011, on the file of the Motor Accident Claims Tribunal, II Judge, Small Causes Court, Chennai.

For Appellant : Mr.Balachandran

For Respondent 1 : Ex parte

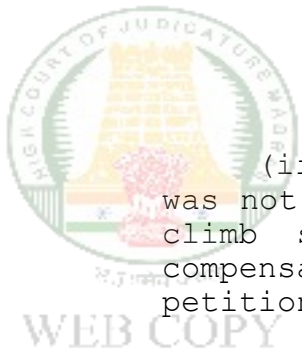
For Respondent 2 : Mr.K.Poomalai

JUDGMENT

Not fully satisfied with the quantum of compensation awarded by the Motor Accident Claims Tribunal, the claimant, is before this Court with this appeal seeking enhancement of compensation.

2. The case of the appellant/claimant in brief is as follows:

(i) On 26.06.2011 at about 11.45 a.m., while the appellant/claimant was riding his motorcycle at Chennai to Tirupathi high road towards Avadi, a van bearing registration No.TN-20-BQ-6987, owned by the first respondent, which was insured with the second respondent, driven in a rash and negligent manner dashed against the motorcycle driven by the appellant/claimant and sustained grievous injuries. Immediately he was taken to Government hospital and after that he was shifted to a private hospital at Chennai and had undergone surgery in the knee and incurred huge medical expenses.



(ii) After treatment, due to the removal of patella bone he was not able to walk and sit cross legged and he was not able to climb stair and hence claiming a sum of Rs.6,00,000/- as compensation, the appellant/claimant has filed the claim petition before the Tribunal.

3. The first respondent / owner of the offending vehicle remained ex parte. The second respondent / insurance company contested the claim petition on the ground that the accident had taken place due to the rash and negligent driving of the appellant/claimant, while coming out of the petrol bunk without noticing the oncoming van, he dashed against the van and hence no negligence can be fixed on the driver of the van and hence the second respondent / insurance company is not liable to pay any compensation. It is further stated that the compensation claimed is highly excessive and speculative.

4. Before the Tribunal, in order to prove the case, the appellant/claimant examined two witnesses as P.Ws.1 & 2 and marked as many as eleven documents as Exs.P1 to P11. On the side of the respondents no witness was examined and no document was marked.

5. The Tribunal after considering the materials available on record, came to the conclusion that the accident had taken place due to the rash and negligence of the driver of the van and the respondents are liable to pay compensation. In respect of the quantum of compensation, the Tribunal fixed the disability at 30% and granted Rs.2,000/- per percentage of disability and awarded a sum of Rs.60,000/-. So far as other heads are concerned, the Tribunal has awarded a sum of Rs.18,000/- towards loss of earning; Rs.10,000/- towards transportation charges; Rs.10,000/- towards extra nourishment; Rs.1,000/- towards damage of clothes and materials; Rs.25,000/- towards medical expenses and Rs.5,000/- towards loss of amenities. Thus, the Tribunal arrived at a total compensation of Rs.1,39,000/-. Not being satisfied with the said compensation awarded by the Tribunal, the appellant/claimant seeking enhancement of compensation filed the present appeal before this Court.

6. Mr.T.G.Balachandran, learned counsel appearing for the appellant submitted that the claimant was the Managing Director of one M/s.Arasan Security Force, and was earning more than Rs.10,000/- per month. Due to the negligent driving of the driver of the first respondent van, the accident had taken place and the claimant suffered grievous injury in the patella and he was admitted in a private hospital for more than one month and incurred nearly Rs.1,00,000/- towards medical expenses. After treatment, he suffered permanent disability and he was not able to walk properly, climb stairs and squat. Though the claimant



has sustained permanent disability at 35%, the Tribunal has granted only a sum of Rs.60,000/- towards the same. The learned counsel further submitted that towards medical expenses, the claimant spent more than Rs.92,000/- and also marked the medical bills as Ex.P5 and P6 issued by MIOT hospital, however the Tribunal only granted a sum of Rs.25,000/- without any reason whatsoever. Towards loss of income, the claimant was bedridden for more than six months and only a sum of Rs.18,000/- was granted towards the same which is very low. In respect of other heads also the Tribunal has granted only low amount.

7. Per contra, Mr.K.Poomalai, learned counsel appearing for the second respondent / insurance company submitted that the accident had taken place in the year 2011, even though the claimant claims that he was the Managing Director of a security agency and earning a sum of Rs.10,000/- per month, no evidence was let in to that effect. That apart, the doctor examined by him submitted that after surgery he has suffered permanent disability and considering the same the Tribunal fixed the disability at 30% and awarded a sum of Rs.60,000/-. The learned counsel fairly admitted that he has verified the medical bills, which was marked as Ex.P5 and Ex.P6, and the total medical expenses comes to Rs.92,000/-. The learned counsel further submitted that in respect of other pecuniary and non pecuniary heads the Tribunal has rightly granted compensation and there is no need to interfere with the same.

8. I have considered the rival submissions.

9. The accident had taken place in the year 2011 and the claimant had suffered the following injuries:

"Grade II Compound Fracture of Patella right."

Admittedly, he has undergone treatment in a private hospital from 26.06.2011 to 25.07.2011 for more than one month and he has also undergone surgery in the knee. The doctor examined by the claimant as P.W.2, has also elaborately explained the nature of the injuries suffered by him and assessed the disability at 35%. Even though it is stated that he suffered permanent disability, perusal of the medical records would show that after surgery the claimant was able to walk but finds difficulty in climbing staircase and squatting. This cannot be stated to be a permanent disability, which has not affected his future earning capacity. Hence, multiplier method cannot be applied in this case. However, considering the nature of injuries sustained by him and the nature of duties performed by him in the security agency, this Court is of the view that the disability of the claimant can be taken as such and a sum of Rs.3,000/- can be awarded per percentage of disability, which comes to Rs.1,05,000/- ($\text{Rs.3000} \times 35\%$). Towards loss of earning, the



Tribunal has only awarded a sum of Rs.18,000/- taking monthly salary as Rs.6,000/- for three months, however the evidence available on record would show that he was the Managing Director of a Security Agency and definitely he would be earning a sum of Rs.10,000/- per month and it is further stated that he was bedridden for nearly six months, hence a sum of Rs.60,000/- (Rs.10,000 x 6 months) is granted towards loss of earning. In respect of extra nourishment, considering the length of treatment, a sum of Rs.25,000/- is granted. In respect of medical expenses, the learned counsel for the second respondent/insurance company after verifying the medical bills marked as Exs.P5 & P6, fairly submitted that the total comes out to Rs.92,000/-, however the Tribunal without any reason whatsoever, awarded only Rs.25,000/-. In the said circumstances, this Court is of the view that actual medical expenses incurred by the claimant should be granted as compensation. Hence a sum of Rs.92,000/- is granted towards medical expenses instead of Rs.25,000/- awarded by the Tribunal. For attender charges a sum of Rs.25,000/- is granted instead of Rs.10,000/- awarded by the Tribunal. Towards loss of amenities and pain and sufferings a sum of Rs.25,000/- is granted instead of Rs.10,000/-. In respect of other heads are concerned, the Tribunal has rightly granted compensation and there is no need to interfere with the same.

10. In view of the above, the compensation awarded by the Tribunal is modified as follows:

Sl . No .	Description	Amount awarded by the Tribunal (Rs.)	Amount awarded by this Court (Rs.)	Award confirmed or enhanced or granted or reduced (Rs.)
1.	Loss of earning	18,000	60,000	Enhanced
2.	Transportation charges	10,000	10,000	Confirmed
3.	Extra nourishment	10,000	25,000	Enhanced
4.	Damage of clothes and materials	1,000	1,000	Confirmed
5.	Medical expenses	25,000	92,000	Enhanced
6.	Cost of attender	5,000	25,000	Enhanced
7.	Loss of amenities & Pain and Sufferings	10,000	25,000	Enhanced
8.	Disability	60,000	1,05,000	Enhanced
	Total	1,39,000	3,43,000	Enhanced by Rs.2,04,000/-



11. In the result, the Civil Miscellaneous Appeal is partly allowed and the compensation of Rs.1,39,000/- awarded by the Tribunal is hereby enhanced to Rs.3,43,000/- together with interest at the rate of 7.5 % per annum from the date of claim petition till the date of deposit. The second respondent / insurance company is directed to deposit the enhanced award amount now determined by this Court along with interest and costs, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment to the credit of M.C.O.P.No.3916 of 2011, on the file of the Motor Accident Claims Tribunal, II Judge, Court of Small Causes, Chennai. On such deposit of the enhanced compensation amount, now determined by this Court, the appellant/claimant is permitted to withdraw the enhanced award amount now determined by this Court, along with interest and costs, less the amount, if any, already withdrawn by making necessary applications before the Tribunal. The appellant/claimant is directed to pay necessary Court fee, if any, on the enhanced compensation now determined by this Court. No costs.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

kk

To

1. The Motor Accident Claims Tribunal,
II Judge, Small Causes Court, Chennai.
2. The Section Officer,
VR Section, High Court, Madras.

+1cc to Mr.T.G.Balachandran, Advocate, S.R.No.42195

+1cc to Mr.K.Poomalai, Advocate, S.R.No.41917

C.M.A.No.2978 of 2019

AJS (CO)
RGA(05/08/2021)